HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 5174 /01

Vijay Singh

VS

State of U.P. and others

Approved for reporting

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~~Not approved for reporting~~

Date of decision: 01.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 5174 (MS) OF 2001

Vijay Singh,
S/o Sri Gabbar Singh,
R/o Village Molta,
Patwari Circle-Langsi,
Tehsil-Joshimath,
District-Chamoli.

.....Petitioner

Versus

1. State of U.P. through Collector Chamoli.
2. District Judge, Chamoli.
3. Prescribed Authority, Joshimath, District-Chamoli.

.....Respondents.

Dated: 01.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri N.S. Negi, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayer for a writ of certiorari quashing the order dated 06.05.1995 and the order dated 19.10.1991 passed by the respondents no.2 and 3 respectively. Further prayer has been made for a writ of mandamus directing the respondents not to interfere in the peaceful Possession of the petitioner over Khasra No. 1079 area 15 Nali in the Village-Molta, Patwari Circle –Langsi, Tehsil Joshimath, District-Chamoli and not to dispossess the petitioner.

Briefly stated, according to the case of the petitioner, he is in possession over the agricultural land are 15 Nali, Khasra No. 1079 situated in Village Molta, Patwari Circle Langsi,

Tehsil-Joshimath, District-Chamoli since last more than 50 years.

The petitioner has submitted that the land is an agricultural. The proceedings under Section 4(1) of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 were initiated against the petitioner.

The petitioner has filed his reply stating therein that he is in continuous possession of the land in dispute for more than 50 year and he is entitled for regularization and the land is and agricultural land as he has sown the crops, which is ready for harvesting.

The prescribed authority has passed the order of eviction on 16.10.1991.

Aggrieved by the said order, the petitioner went in appeal. The said appeal was registered as Appeal No. 47 of 1991 Vijay Singh Vs. State of U.P. the appellate Court has also passed an order to that effect.

Counsel for the petitioner has submitted that the land is not covered under the definition of Public Premises (Eviction of Unauthorized Occupants) Act and is exempted under the Act.

In ***Ranjeet Singh Vs. State of U.P. & others [2002(1) ELC 508 (HC),*** this Court has passed the following order to the following effect:-

"4. Learned counsel for the petitioners contended that the proceedings relating to agricultural land could not have been initiated under the Uttar Pradesh (Eviction of Unauthorised Occupants) Act. If the petitioners were unauthorized occupants on any agricultural land belonging to State, the proceedings under Section 122-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 could be drawn against them, as the land held by a tenure holder for the time being is not a public premises.

5. I find force in the contention of the learned counsel for the petitioners. The definition of "land" as defined under Section 3(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 reads as under:

"Land" means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

6. In the present case, the disputed land is admittedly used for the petitioners for the purposes of agricultural as is evident from the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P. Zamindari Abolition & Land Reforms Act itself provides procedure for eviction of unauthorized occupants under Section 122-B of the U.P. Zamindari Abolition & Land Reforms Act. The agricultural land is not covered under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, as is evident from the definition of U.P. Public premises (Eviction of Unauthorised Occupants) Act, 1972, which reads as under:-

"2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes,-

(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building; and

(ii) Any fittings or fixtures affixed to or any furniture supplied with such building or art of a building for the more beneficial enjoyment thereof.

but does not include land which for the time bering is held by a tenure holder under any law relating to land tenures."

"2(e) 'Public premises' means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of:

(v) any company as defined in Section 3 of Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital is held by the State Government; or

(vi) any local authority; or

(vii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or

(viii) any society registered under the Societies Registration Act, 1860, the governing body whereof consists under the rules or regulation of the society, wholly or public officer, or nominees of the State Government, or both;

and also includes,--

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds or land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) Any premises acquired under the land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions."

7. Therefore, a conjoin reading of the definitions given under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 of the premises and

public premises clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act in case a tenure holder holds the land for the time being. In the present case, the evidence is on record that the petitioners were in possession on the disputed land from 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioners were a tenure holder for the time being.

8. Hence the proceedings could only be drawn under U.P. Zamindari Abolition & Land Reforms Act and could not have been drawn under the Uttar Padesh Public Premises (Eviction of Unauthorised Occupants) Act. Thus, the proceedings initiated under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, which gave rise to these writ petitions, were without jurisdiction."

A writ of certiorari is issued quashing the order dated 08.03.1978 and order dated 09.09.1977 passed by the respondents no. 1 and 2 respectively.

In view of the aforesaid, the notice issued under section 4(1) of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 is discharged. Respondents are also directed to consider the regularization of the petitioner in accordance with law.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

01.07.2006
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